

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)	No. 1:CR-04-301
	)	
v.	)	(Judge Conner)
	)	
ARTHUR GARCIA,	)	
	)	
Defendant.	)	(Electronically Filed)

UNITED STATES' RESPONSE TO  
DEFENDANT'S MOTION FOR REVIEW OF DETENTION ORDER

COMES NOW, the United States of America, by its attorneys,  
Thomas A. Marino, United States Attorney for the Middle District of  
Pennsylvania, and James T. Clancy, Assistant United States  
Attorney, and respectfully responds to defendant's Motion for  
Review of Detention Order.

Background

Defendant was charged in a two-count Indictment on  
September 28, 2004. Count I charges use and attempt to use the  
Internet to induce a minor to engage in illegal sexual activity in  
violation of Title 18, United States Code, Section 2422(b). Count II  
charges interstate travel to engage in illicit sexual conduct in

violation of Title 18, United States Code, Section 2423(b). Each of these indicted charges carries with it a rebuttable presumption that no condition or combination of conditions will assure the appearance of the defendant and the safety of the community. See 18 U.S.C. 3142(e). At the arraignment, the United States moved for pre-trial detention. After hearing proffers by counsel for both the United States and the defendant, the Magistrate Judge found that the defendant had not rebutted the presumption of danger to the community. Defendant's counsel requested the ability to present additional evidence as to the weight of the evidence in an effort to rebut that presumption. The Magistrate Judge scheduled an additional hearing for that purpose. That hearing took place on November 1, 2004.

At the November 1 hearing, counsel for the defendant submitted thirteen documentary exhibits, the vast majority of which supported a finding already made by the Magistrate Judge, *i.e.*, that the defendant is not a flight risk. Defense counsel also submitted copies of papers filed in York County court in connection

with the original state charges brought against the defendant before this case was referred for federal prosecution. The relevance of those documents, defense counsel argued, was to suggest that the credibility of the victim in this case, a fourteen-year-old girl, was suspect. Defense counsel's argument essentially was that, because a medical report showed no signs of bruising or lacerations, no seminal fluid was found in an internal exam, and a hair found in the victim's underwear did not match the defendant's, the victim's allegation that the defendant forced sexual intercourse upon her was not credible.

In rebuttal, the United States presented testimony of FBI Special Agent Timothy Lynch. Agent Lynch conducted a review of all files found on the defendant's laptop computer seized from him at the time of his arrest as he prepared to catch a flight out of Harrisburg to return to his home state of California. Agent Lynch described and the United States offered in evidence ten excerpts from more than 1,800 pages of instant message transcripts found on the defendant's computer. Those excerpts showed, the United

States argued, the defendant's attempt to induce the minor victim to engage in illegal sexual activity and the defendant's intent to travel from California to Pennsylvania to engage in illicit sexual conduct with this minor. The United States also argued that whether the defendant actually engaged in illicit sexual conduct with this minor is irrelevant for purposes of rebutting the presumption of detention because neither of the statutes under which the defendant is charged have as an element of the offense the actual completed act of engaging in the illegal sexual conduct. After hearing the evidence and argument by counsel, the Magistrate Judge found that the defendant had not rebutted the presumption of danger to the community. Therefore, the defendant was ordered detained pending trial.

On November 8, 2004, the defendant filed the instant Motion for review of the Magistrate Judge's detention order. This Court has scheduled a hearing on that Motion for Wednesday, November 10, 2004.

### Argument

This Court's review of the order of detention is *de novo*. *United States v. Himler*, 797 F.2d 156, 158 (3d Cir. 1986). Based on the Motion filed by the defendant, it appears that this Court has before it all that is necessary to make this bail determination. All of the exhibits submitted to the Magistrate Judge are available for review. Additionally, the transcripts of both proceedings have been prepared and filed of record. It appears from defendant's motion that he seeks a hearing simply to present and argue to this Court that which already has been presented and argued to the Magistrate Judge. Given the record that exists in this case, however, the United States respectfully submits that this Court can review that record *de novo* and make its determination without the need for another hearing.

### Conclusion

For the foregoing reasons, the United States suggests that this Court need not conduct another hearing in order to properly review the detention order in this case. Based on all of the evidence

already submitted, as well as the delineation of that evidence contained in defendant's instant motion, there is nothing in the record that rebuts the statutory presumption that the defendant is a danger to the community and should be detained pending trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Local Rule 7.2, I hereby certify that I served the foregoing pleading on opposing counsel by causing a copy of the motion to be electronically filed.

Respectfully submitted,

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